

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

tmd3574/mrm
September 20, 2018
10:30 AM

=====X
IN RE:

Case No. 818-72747-LAS

RODNEY MCTOOTLE,

Hon. LOUIS A. SCARCELLA

NOTICE OF MOTION

Debtor.
=====X

PLEASE TAKE NOTICE, that upon the within application, Marianne DeRosa, Chapter 13 Trustee will move this court before the Hon. Louis A. Scarcella, U.S. Bankruptcy Judge, at the United States Bankruptcy Court, at 290 Federal Plaza, Room 963, Central Islip, New York, 11722, on September 20, 2018 at 10:30 AM or as soon thereafter as counsel can be heard, for an order pursuant to 11 U.S.C. 1307(c) dismissing this Chapter 13 case and for such other and further relief as may seem just and proper.

Responsive papers shall be filed with the bankruptcy court and served upon the Chapter 13 Trustee, Marianne DeRosa, Esq., no later than seven (7) business days prior to the hearing date set forth above. Any responsive papers shall be in conformity with the Federal Rules of Civil Procedure and indicate the entity submitting the response, the nature of the response and the basis of the response.

Date: Jericho, New York
August 30, 2018

/s/ Marianne DeRosa
MARIANNE DeROSA, TRUSTEE
125 JERICHO TURNPIKE; STE 105
JERICHO, NY 11753
(516) 622-1340

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

tmd3574/mrm
September 20, 2018
10:30 AM

=====X

IN RE:

Case No: 818-72747-LAS

RODNEY MCTOOTLE,

Hon. LOUIS A. SCARCELLA

APPLICATION

Debtor.

=====X

TO THE HONORABLE LOUIS A. SCARCELLA U.S. BANKRUPTCY JUDGE:

MARIANNE DEROSA, Chapter 13 Trustee in the above-captioned estate, respectfully represents the following:

1. The Debtor filed a petition under the provisions of 11 U.S.C. Chapter 13 on April 23, 2018, and, thereafter, MARIANNE DEROSA was duly appointed and qualified as Trustee.

2. The Debtor's proposed Chapter 13 Plan (hereinafter referred to as "the Plan") is dated June 4, 2018 and reflected on the Court's docket as number 16. The Plan provides for payments in the amount of \$5,047.23 per month for a period of 60 months.

3. The Plan also provides that the Debtor's mortgage arrears owed to Shellpoint, with respect to the real property located at 421 Holly Place, West Hempstead, NY will be capitalized pursuant to a loan modification.

4. As of the date of this application, the Debtor has not filed a request to enter into the Court's Loss Mitigation Program.

5. The Trustee objects to the confirmation of the Plan because the Plan is not adequately funded to provide for full repayment to all secured creditors as required by 11 U.S.C § 1325(a)(5).

6. Furthermore, the Debtor has failed to:

a. provide the Trustee with a copy of an affidavit by the debtor stating whether the debtor has filed all applicable federal, state, and local tax returns as required by Bankruptcy Code §1308 pursuant to E.D.N.Y. LBR 2003-1(b)(iii); and

b. provide the Trustee with a copy of an affidavit by the debtor stating whether the debtor either has paid all amounts that are required to be paid under a domestic support obligation and that first came payable after the date of the filing of the petition if the debtor is required by a judicial or administrative order or by statute to pay such domestic support obligation; or that the debtor has no domestic support obligations as required by E.D.N.Y. LBR 2003-1(b)(ii); and

c. comply with 11 U.S.C § 1325(a)(6) in that the Debtor has failed to submit timely Chapter 13 Plan payments to the Trustee; and

d. provide the Trustee with copies of canceled checks, receipts, money orders or other documentation of payment of all mortgage installments and real property lease payments that have come due since the filing of the petition as required by E.D.N.Y. LBR 2003-1(a)(vi) and E.D.N.Y. LBR 2003-1(b)(i); and

e. provide the Trustee with a copy of a federal income tax return or transcript for the most recent year, 7 days before first meeting of creditors pursuant to 11 U.S.C. §521(e)(2)(A)(i); and

f. provide the Trustee with all disclosure documentation as required by E.D.N.Y LBR 2003-1; and

g. serve the plan on the trustee and all creditors within 7 days of filing of the plan and file proof of service there of as required by E.D.N.Y. LBR 3015-1(a).

7. The Debtor's failure to provide these items impedes the Trustee's ability to administer this case and, therefore, is a default that is prejudicial to the rights of the creditors of the Debtor pursuant to 11 U.S.C. §1307(c)(1).

8. Each of the foregoing constitutes cause to dismiss this Chapter 13 case within meaning of 11 U.S.C. §1307(c).

WHEREFORE, the Chapter 13 Trustee respectfully requests that this Court enter an Order dismissing this Chapter 13 case and for such other and further relief as may seem just and proper.

Dated: Jericho, New York
August 30, 2018

s/Marianne DeRosa
Marianne DeRosa
Chapter 13 Trustee

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----X
IN RE:

Case No: 818-72747-LAS

RODNEY MCTOOTLE,

CERTIFICATE OF SERVICE
BY MAIL

Debtor.

-----X

This is to certify that I, Matthew R. Matz, have this day served a true, accurate and correct copy of the within Notice of Motion and Application by depositing a true copy thereof enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State, addressed to each of the following persons at the last known address set forth after each name:

RODNEY MCTOOTLE
421 HOLLY PLACE WEST
WEST HEMPSTEAD, NY 11552

ANTHONY M. VASSALO, ESQ.
LAW OFFICE OF ANTHONY M. VASSALO
305 FIFTH AVE, STE 1B
BROOKLYN, NY 11215

BETHPAGE FEDERAL CREDIT UNION
C/O RIVKIN RADLER LLP
926 RXR PLAZA
UNIONDALE, NY 11556

RUSHMORE LOAN MANAGEMENT SERVICES, LLC
GROSS POLOWY, LLC
1775 WEHRLE DRIVE, SUITE 100
WILLIAMSVILLE, NY 14221

THE BANK OF NEW YORK MELLON
PINCUS LAW GROUP, PLLC
425 RXR PLAZA
UNIONDALE, NY 11556

This August 30, 2018

/s/Matthew R. Matz
Matthew R. Matz, Paralegal
Office of the Standing Chapter 13 Trustee
Marianne DeRosa, Esq.
125 Jericho Turnpike; Suite 105
Jericho, NY 11753
(516) 622-1340

CASE NO: 818-72747-LAS
Hon. LOUIS A. SCARCELLA

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

=====

IN RE:

RODNEY MCTOOTLE,

Debtor.

=====

NOTICE OF MOTION AND APPLICATION TO DISMISS CASE

=====

MARIANNE DeROSA, TRUSTEE
125 JERICO TURNPIKE; SUITE 105
JERICO, NY 11753
(516) 622-1340